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Ms Marjorie Davies
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Dear Ms Davies

I am writing with reference to the formal consultation concerning the "Payment Protection Insurance Market Investigation Order 2009". The British Retail Consortium is pleased to take this opportunity to respond.

For your reference, the Mail Order Traders Association (MOTA) made a response to the "Emerging Thinking" document in November 2007. In April 2008 the members of MOTA decided to continue the Association's work through the Consumer Credit Policy Action Group (CCPAG) of the British Retail Consortium (BRC), which now provides the forum for former MOTA members. This group represents the major longstanding UK home shopping titles belonging to N.Brown Group plc, Redcats, Express Gifts, Shop Direct and Otto UK. It is on behalf of these mail order retailers that this response is made. The BRC is aware that some of these firms are submitting separate responses.

The Commission will be aware that a BRC member (Shop Direct Group Financial Services) has been granted permission to intervene in the Barclays appeal against the Commission's report and findings. This response and any subsequent correspondence should not be considered to indicate acceptance of the Commission's findings or remedies.

The BRC's comments on the draft Order are as follows:

PPI Quotes

As there is some duplication of the information requirements as they apply to Quotes and Annual Reviews, many of the comments which follow are equally applicable to the Annual Review. In the interest of brevity, and where there is such commonality, the comments have not been duplicated.

There remains serious concern that the Order, as currently drafted, will result in home shopping customers being overloaded with information on PPI. This presents real, and apparently irreconcilable, conflicts with the FSA's principle of Treating Customers Fairly. For example, a customer who seeks to purchase a bundled policy will need to be informed of its cost in four different ways. This is in addition to equivalent calculations for PPI alone, making eight different calculations of cost, namely:

- Illustrative annual cost of ASU cover based on a typical outstanding balance of £300
- Illustrative monthly cost of ASU cover based on a typical outstanding balance of £300
- Monthly cost of ASU cover for every £100 of outstanding balance covered
- Monthly cost of ASU cover for every £100 of monthly benefit
- Illustrative annual cost of bundled cover based on a typical outstanding balance of £300
- Illustrative monthly cost of bundled cover based on a typical outstanding balance of £300
- Monthly cost of bundled cover for every £100 of outstanding balance covered
- Monthly cost of bundled cover for every £100 of monthly benefit

There is further concern that the illustrative monthly and annual costs based on a typical outstanding balance of £300 are misleading as the customer's balance when offered PPI is almost certain to be a lot less. The companies that offer Retail PPI vary widely between their typical average balances. Typical average balances at time of offering Retail PPI, range from as low as £74 up to £150. Therefore an illustrative cost set at £300 would be misleading for all Retail PPI providers. This runs contrary to the guidance given in ICOBS 6.4.10 G where Retail PPI providers are required to "enable a typical customer understand the typical cumulative cost of taking out the policy". If a calculation of this nature is considered necessary, and a company specific typical balance not allowed, a figure of £100 would prove a far less misleading basis for the calculation and would also be easier for customers to use as a multiplier should they need to work out what charges on a £300 balance would be.

It should be noted that the continued reference to the document as a "quote" is incorrect in law. A quote is a binding fixed price. An estimate is a "best guess". This is an estimate, not a quote, and must be amended accordingly.

In addition, the provision of a "combined APR" figure is a development of the annual percentage rate of charge figure familiar to customers, and will serve only to add to the confusion. Given the smaller premiums involved with Retail PPI, the combined figure exaggerates the difference between Retail PPI and other forms of PPI. The APR is unnecessary where comparison with stand-alone policies requires only the cost per £100 benefit and balance covered. It is acknowledged that the Commission's own consumer research concluded that the "combined APR" figure was well received by consumers. With reference to the example described in the recent briefing seminars, in which an APR which did not include PPI moved from 19% to 28% once PPI was added, it is hardly surprising that this was a comparison that found favour as it made the loan appear to be about 50% more expensive. What this really illustrates is that customers do not understand APRs.

There is concern that, as the use of any of the defined elements of the marketing statement will give rise to the requirement to issue a quote, then customers who had shown no interest in PPI will be required to receive a quote nonetheless. This is wasteful and a way should be found to ensure that quotes are only sent to those customers who are considering buying the product. Can the "reasonable grounds" test (as in 8.1 and 8.2) be applied to the provision of quotes to ensure that only those who express an interest actually receive the quote?

As currently drafted, both the PPI quote and the Annual Review require providers to print the customer's age on the document. There will be occasions when a customer's birthday occurs between the date the quote was printed and the date it was received, and which will lead to confusion and unnecessary attempts to clarify. As all firms hold date of birth information, it would seem appropriate to use that data, rather than other information derived from it. The effort required to provide IT solutions to comply with such a requirement will be wholly disproportionate.

Other issues concerning the PPI Quote are as follows:

The statement "Cheaper and more appropriate cover may be available..." carries a presumption that the policy being offered is not the cheapest and is inappropriate. "Cheaper and more appropriate" should be replaced by "alternative".

Similarly, the word "unbiased" in the sentence beginning "For unbiased information about insurance..." should be replaced by "independent". The nuances introduced by these wordings are quite unacceptable and cause regulatory difficulties for firms which provide PPI on a non-advised basis inasmuch as they purport to give advice.

The word "unbiased" is mirrored in the Schedule 1a statement and which should be amended accordingly.

Annual Reviews

The following comments are applicable to the Annual Review documents and are in addition to the comments in relation to quotes, above.

Article 4.2 does not require providers of PLPPI to provide annual reviews for policies entered into before commencement of this Order. As the Commission will be aware, all monthly payments made by PLPPI customers will include an element of PPI charge which will have been pre-loaded onto the loan at the time of sale and which will be payable by the consumer every month. As the Commission has deemed that situation

not to require an annual review, the apparent requirement for retrospective application to existing policies in the retail situation, where most accounts are cleared in six or seven months, is both inconsistent and unfair.

There is a cost implication in the provision of policy summaries which the Commission may not previously have considered. It should always be borne in mind that customers are already in receipt of their policy documents, and there appears little benefit in reproducing them on an annual basis. It must be remembered that, until general insurance became regulated by the FSA in 2005, there was no requirement to provide a policy summary. This means that one will have to be drafted specially for the purpose of older policies. This will result in additional costs for both Insurers who will have to draft the policy summaries and providers who will be required to print and send them out. In all cases BRC members will not be able to print the policy summary on the back of the Annual Review as suggested in the draft order as there is too much information to be given to customers.

Furthermore, all BRC retail members provide their customers with four-weekly or monthly statements with their PPI premium clearly itemised. BRC retail members have always allowed customers to cancel at any time, without notice and without penalty, and have always demonstrated an historic and ongoing record of fairness to consumers seldom seen elsewhere. Indeed this is not just a "goodwill approach" from Retail PPI providers but is in fact a legal obligation given these terms are written into the policy terms and conditions. The fairest and most consistent outcome would be to remove the words "Retail PPI" from Article 4.2 and remove this retrospective requirement.

In relation to the requirement to provide an Annual Review, Paragraph 3 of Schedule 3 makes provision for when credit statements are provided on a 4 weekly rather than a monthly cycle. This provision is not currently replicated in Schedule 4, in relation to the provision of quotes. This will cause difficulty for firms working to a 4 week billing cycle and appears to be a drafting omission. There is serious concern this was not rectified following the BRC's response to the informal consultation.

The timing of the Annual Review remains of some concern. The requirement in Article 4.1(b) that subsequent Annual Reviews are to be sent within two weeks of the anniversary of the first will cause considerable difficulty and additional unnecessary and disproportionate costs. Time will be required to compile the required figures. Twelve clear months of monthly statements will be required to enable the "average monthly" calculations, as required by the Review, to be compiled. Some members of the BRC have indicated that their current systems will be unable to accommodate an Annual Review and will have to employ 3rd parties to complete it for them. If this is the case it is likely that a data file with the required information will be generated weekly. The data file would then be passed to the third party who would have to manipulate the file and produce a print file. A week would then be required to print the actual Review, a week to fill the document into envelopes and a week to allow for transfer to post office for posting and a week allowed for delivery. In order to achieve this, the two week window is completely unworkable. At least eight weeks will be required. It should be noted that in order to maximise economies of scale a monthly file would reduce costs as a large print run would obviously be cheaper than a smaller weekly one, however the timescale of 2 weeks would again be unworkable. Please note that Retail PPI providers are mail order specialists and the timings provided above are based on mailings which currently take place throughout their businesses.

The Commission's intention requires clarification in relation to the provision of electronic statements as described in Article 4.7. "At the specific request of the policyholder" suggests that a customer must actively seek to receive her Annual Review in a durable electronic format. We must all accept that the manner by which the Review is subsequently to be delivered is unlikely to be uppermost in the customer's thoughts. On that basis, and to enable providers to seek the customer's permission (which we believe to be the Commission's intention in any case), the words "at the specific request" should be replaced by "with the agreement". This solution addresses the real issue, that is, consent to receiving in this format should be obtained.

Information Requirements

There is general concern that the draft rules concerning prominence are unnecessarily prescriptive and will result in home shopping customers being overloaded with information on PPI. In relation to Marketing Statements, this information is to be presented in a way which will not permit customers to absorb the information in a way which is meaningful to those individuals. The BRC remains of the view that the proposed information requirements are unnecessarily burdensome and leave no freedom to emphasise those matters most relevant to our customers. A degree of flexibility must be introduced to permit marketing material to be

presented in a way which is not as prominent as the Marketing Statement itself. Firms' adherence to the FSA's rules on marketing material will ensure that crucial information is not relegated to the "small print". The contrast in prominence would have the effect of emphasising the Marketing Statement message, which is surely what the Commission is seeking to achieve.

Claims Ratios

There is some concern that the requirement to respond to an oral request within 24 hours may be unnecessarily prescriptive under certain circumstances, particularly on Saturdays, or during statutory holiday periods. The BRC recommends this be amended to reflect the FSA's current complaint handling rules, that is, by close of business the working day after the request was received.

In relation to the requirement for a plain English explanation of claims ratios, the Commission has previously acknowledged the considerable difficulties around such explanations. These matters are complex and are influenced, amongst other things, by the customer's propensity to claim. There are a large number of socio-economic factors that may influence this. It is difficult to see how a plain English explanation, and one which would have to be of sufficient brevity to avoid causing confusion, could ever provide anything approaching a meaningful explanation. In our efforts to assess the practicalities of such a requirement, the following is a truthful explanation:

"Claims ratios are a function of successful claims divided by premiums received, and expressed as a percentage. This is a crude measure which does not take into account the number of claims, the number of declined claims, or the value of those claims. It does not take into account the varying types of claims received from different socio-economic groups".

It is of concern to BRC members that, as a consequence of the current inquiry, a perception has been unearthed that insurers fail to pay out on claims. Every PPI supplier will have a different view on what is meant by a "claims ratio". Different distributors have different demographic bases and these influence the type, value and indeed the number of claims. Successful payments are what matter to customers. With this in mind, the BRC considers that a more meaningful, and relevant, statistic would concern the number of claims paid out as a percentage of all claims made. Whilst even this approach is far from perfect, it does at least overcome many of the obvious objections to the use of claims ratios as a meaningful measure.

Schedule 5c

It is difficult to see, even with the compliance systems and controls which are in place in all firms, how non-compliances, albeit of a minor nature, can always be avoided. Indeed, if firms were consistently to report non-compliances, there may be grounds to suspect that there was an under-reporting of such incidences. However, the threat that "one verified non-compliant mystery shop will constitute evidence of non-compliance with the Order" risks driving precisely that behaviour. Whilst all enforcement agencies will normally take a rational view on the seriousness or otherwise on minor transgressions based on a customer detriment test as well as the firm's willingness to put things right, this is not what is stated in Schedule 5c(4).

If it would be of assistance, members remain willing to speak with you directly about any of the matters raised, either individually or as a group.

Should you wish to clarify any of the points raised in this response, do not hesitate to contact me. I can confirm that nothing in this letter should be withheld from publication.

Yours sincerely

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